AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111
Serial Number: 10/749,803
Filing Date: December 29, 2003
Title: POWER CONSERVATION IN WIRELESS DEVICES
Assignee: Intel Corporation

Page 7
Dkt: 884.A47US1 (INTEL)

REMARKS

This paper responds to the Office Action mailed on October 24, 2006.

Claims 1, 9, 15 and 23 are amended, no claims are canceled, and claim 32 is are added; as a result, claims 1-32 are now pending in this application.

§103 Rejection of the Claims

Claims 1-31 were rejected under 35 USC § 103(a) as being unpatentable over Itoh et al. (U.S. 2002/0072391). Applicant respectfully traverses.

Claim 1, as amended and in part, recites "a kernel level sense driver adapted to sense an operational state of at least two of the plurality of wireless network adapters; and a policy manager, at a different ring than the kernel level sense driver." Applicant can not find these features in Itoh. For example, applicant can not find a kernel level sense driver or a policy manager, at a different ring than the kernel level sense driver in Itoh. Specifically, applicant can not find the term "kernel" or "different ring" in Itoh.

As applicant can not find all of the features recited in Claim 1 in Itoh, applicant requests reconsideration and withdrawal of the rejection of claim 1.

Additionally, dependent claims 2-8 depend from independent claim 1. Accordingly, claims 2-8 incorporate the features of claim 1. These dependent claims are accordingly believed to be patentable for at least the reasons stated herein. For brevity, Applicant defers (but reserves the right to present) further remarks, such as concerning any dependent claims, which are believed separately patentable.

Claim 9, as amended and in part, recites "a kernel sensing driver adapted to sense an operational state of at least two of the plurality of network adapters; a policy manager, at a different level than the kernel sensing driver, adapted to receive state information from the sensing driver and to selectively activate at least one of the plurality of network adapters based on the state information and a hierarchy of preferred network adapters." Applicant can not find these features in Itoh. For example, applicant can not find a kernel sensing driver or a policy manager, at a different level than the kernel sensing driver in Itoh. Specifically, applicant can

not find the term "kernel" in Itoh. Applicant can not find where Itoh describes a policy manager at a different level than a kernel sensing driver.

Claim 9 further recites a battery. The Office Action admits that Itoh does not teach a battery, see Office Action page 3. It appears that the Office Action is asserting that this feature is inherent in Itoh. Applicant respectfully disagrees because the Office Action has not established a *prima facie* case of inherency because, as recited in MPEP § 2112, "In relying upon the theory of inherency, the examiner must provide basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art," citing Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

It further appears that the Office Action may be taking official notice of the battery element. If asserted, applicant respectfully traverses this official notice and requests the Examiner to provide a reference that describes such an element. Absent a reference, it appears that the Examiner is using personal knowledge, so the Examiner is respectfully requested to submit an affidavit as required by 37 C.F.R. § 1.104(d)(2).

Based at least on the above, applicant requests reconsideration and withdrawal of the rejection of claim 9.

Dependent claims 10-14 depend from independent claim 9. Accordingly, claims 10-14 incorporate the features of claim 9. These dependent claims are accordingly believed to be patentable for at least the reasons stated herein. For brevity, Applicant defers (but reserves the right to present) further remarks, such as concerning any dependent claims, which are believed separately patentable. For example, claims 11-14 each recite features of the battery that distinguish over Itoh.

Claim 15, as amended and in part, recites "storing a hierarchy of network adapters in a user device; sensing available network adapters using a kernel level driver; . . . and deactivating at least one of the other available network adapters." Applicant can not find these features in Itoh. For example, applicant can not find a sensing available network adapters using a kernel sensing driver in Itoh. Specifically, applicant can not find the term "kernel" in Itoh.

Based at least on the above, applicant requests reconsideration and withdrawal of the rejection of claim 15.

Dependent claims 16-22 depend from independent claim 15. Accordingly, claims 16-22 incorporate the features of claim 15. These dependent claims are accordingly believed to be patentable for at least the reasons stated herein. For brevity, Applicant defers (but reserves the right to present) further remarks, such as concerning any dependent claims, which are believed separately patentable.

Claim 23, as amended and in part, recites "a sense driver at a kernel level adapted to sense an operational state of at least two of the plurality of wireless network adapters; and a policy manager, at a different software level than the sense driver." Applicant can not find these features in Itoh. Reconsideration and allowance of claim 23 is requested.

Dependent claims 24-31 depend from independent claim 23. Accordingly, claims 24-31 incorporate the features of claim 23. These dependent claims are accordingly believed to be patentable for at least the reasons stated herein. For brevity, Applicant defers (but reserves the right to present) further remarks, such as concerning any dependent claims, which are believed separately patentable.

Claims 1-31 were rejected under 35 USC § 103(a) as being unpatentable over Itoh et al. alone. Applicant respectfully traverses the single reference rejection under 35 U.S.C. § 103 since not all of the recited elements of the claims are found Itoh. Since all the elements of the claim are not found in the reference, Applicant assumes that the Examiner is taking official notice of the missing elements. Applicant respectfully objects to the taking of official notice with a single reference obviousness rejection and, pursuant to M.P.E.P. § 2144.03, Applicant respectfully traverses the assertion of Official Notice and requests that the Examiner cite references in support of this position.

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Page 10
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Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney ((612) 349-9587) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

AJAY G. GUPTA ET AL.

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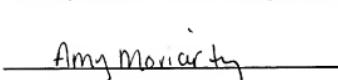Minneapolis, Minnesota 55402
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexendria, VA 22313-1450 on this 29th day of December 2006.

Amy Moriarty   _____
Name   Signature